PAKISTAN

TRADE SUMMARY

The U.S. goods trade deficit with Pakistan was $1.6 billion in 2008, an increase of $55 million from $1.5 billion in 2008. U.S. goods exports in 2008 were $2.0 billion, down 2.1 percent from the previous year. Corresponding U.S. imports from Pakistan were $3.6 billion, up 0.4 percent. Pakistan is currently the 63rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Pakistan was $674 million in 2007 (latest data available), down from $1.2 billion in 2006.

IMPORT POLICIES

Although for 2007-08, Pakistan's average applied tariff was 14.5 percent, with 14 different *ad valorem* duties ranging from 0 percent to 90 percent, and specific rates of duty on 44 products, in its 2008-09 budget, the government of Pakistan increased duties on 300 non-essential and luxury items from the 15 percent to 25 percent range to between 30 percent and 35 percent. These items include cosmetics, many domestic appliances, luxury food items and cigarettes. The custom duties on cars with 1800cc engine capacity and larger have been raised from 90 percent to 100 percent. A 5 percent duty has been imposed on imported vehicles with engines smaller than 850cc engine capacity. A $3.70 duty is being assessed on imported cell phone handsets. Pakistan's simple average applied tariff was 13.1 percent in FY 2008.

Pakistan has a 55 percent duty on imported automotive parts that are also manufactured domestically and a 35 percent duty on those automotive parts that it does not manufacture domestically. Pakistan reduced duties on instant print film and instant print cameras to 5 percent from the prior 30 percent to 200 percent range in order to eliminate incentives for smuggling.

The government of Pakistan reserves the right to grant sector-specific duty exemptions, concessions, and protections under Statutory Regulatory Orders (SROs). The government in 2006 exempted all domestically-produced and imported pharmaceutical-related inputs from its General Sales Tax. An SRO issued in August 2002 exempted pharmaceutical products from the General Sales Tax. In recent years, the use of SROs has decreased. SROs and other trade policy and regulatory documents are published on the Central Board of Revenues website: http://www.cbr.gov.pk.

U.S. soft drink manufacturers have reported that Pakistan imposes a 12 percent Central Excise Duty (CED) on carbonated soft drinks and a 50 percent CED on soft drink concentrate. Competing beverages, including sweetened fruit-flavored drinks, juice and bottled water, are not subject to the taxes.

In January 2000, the Pakistani government began implementing a transactional valuation system, under which 99 percent of import valuation is based on invoice value, in accordance with the WTO's Customs Valuation Agreement. Currently, about 90 percent to 95 percent of imports are assessed duties pursuant to the transactional valuation system, including Pakistan's major imports such as industrial and power equipment, petroleum and petroleum products, and chemicals. A number of traders in food and nonfood consumer products, however, report that the system is not uniformly applied. A few major U.S. companies in the machinery and materials sector have reported specific concerns with application of customs valuation methods by Pakistan Customs. Pakistan is not enforcing a 2005 regulation requiring that the commercial invoice and the packing list be included inside a container. The inclusion of invoice and packing lists is difficult in situations when shipments originate in a different location from where the

invoice and packing list are created, or when invoices are created after the shipment departs, or when several companies are involved.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Pakistan Standards and Quality Control Authority (PSQCA) is the national standards body. The functions of PSQCA include the establishment and enforcement of national standards, registration of inspection agencies, and assessment of industrial raw materials and finished products for compliance with international standards. As of June 30, 2008 (the end of Pakistan's 2008 fiscal year), PSQCA had adopted over 27,165 standards (including 15,000 International Organization for Standardization (ISO) standards and 6,000 IEC standards) for agriculture, processed food, chemicals, civil and mechanical engineering, electronics, weights and measures, and textile products. Current estimates indicate that there are 15 certification bodies operating in Pakistan, and close to 2,700 enterprises have been issued ISO 9000, ISO 14000 and Occupational Health and Safety Advisory Services (OHSAS) 18000 certificates. (Initially there were 5,000 but many of the enterprises dropped out of the program). All of the certification bodies operating in Pakistan are foreign-based. U.S. industry contends that inconsistent application of PSQCA requirements occasionally results in discrimination against U.S. agricultural products.

Generally, U.S exporters have not reported significant problems due to the application of standards and technical regulations. Pakistan allows the import of U.S. products that meet U.S. standards in cases where there are no Pakistani standards or where the Pakistani standards (some of which are based on U.S. standards) do not conflict with the U.S standards. As a result, Pakistan allows the import of most U.S. products that meet U.S. standards without meeting further requirements.

The government of Pakistan approved biosafety guidelines and rules in April 2005 and also approved an action plan to implement these guidelines. As part of the action plan, the government has established a National Biosafety Committee within the Environment Ministry. The Committee has the mandate to approve applications, sell biotechnology based products in Pakistan, and register biotechnology products. To date, the Committee has received 23 applications related to genetically modified organisms, 12 of which have been approved for laboratory tests while 2 have been approved for field testing in order to qualify for commercial use. Currently there are no restrictions on importing genetically modified products from the United States as long as they meet U.S. standards.

GOVERNMENT PROCUREMENT

Pakistan is not a signatory to the WTO Agreement on Government Procurement. The government uses an open procurement process, though bidders have to register with the government in order to be awarded contracts. Registration is required to ensure that legitimate businesses are bidding for contracts. The Public Procurement Regulatory Authority (the Authority), which was established in 2002, is an autonomous body responsible for prescribing regulations and procedures for procurement by public sector entities and for monitoring procurement by such entities. In 2004, the Authority enacted a regulatory framework for public procurement which is aimed at establishing transparent public procurement practices. Pursuant to the 2004 regulatory framework, international tender notices are publicly advertised and sole source contracting using company-specific qualifications has been eliminated. There are no official "buy national" policies.

Political influence on procurement decisions, charges of official corruption, non-transparency, and long delays in bureaucratic decision making are common. Suppliers have reported instances where the

government used the lowest bid as a basis for further negotiations, rather than accepting the lowest bid under its tender rules.

EXPORT SUBSIDIES

Pakistan actively promotes the export of Pakistani goods with measures such as tariff concessions on imported inputs and income and sales tax concessions. Subsidies in Pakistan's 2008 fiscal year were confined mostly to wheat and totaled roughly $7.6 million, according to government sources. There was no freight subsidy in FY 2008. The government provided $239 million as a Research and Development subsidy to the textile sector in FY 2008.

Pakistan established its first Export Processing Zone (EPZ) in Karachi in 1989, with special fiscal and institutional incentives available to encourage the establishment of exclusively export-oriented industries. The government subsequently established additional EPZs in Risalpur, Gujranwala, and Sialkot in Punjab Province, and Saindak and Duddar in Balochistan Province. Principal government incentives for EPZ investors include an exemption from all federal, provincial, and municipal taxes for production dedicated to exports; exemption from all taxes and duties on equipment, machinery, and materials (including components, spare parts and packing material); indefinite loss carry-forward; and access to Export Processing Zone Authority One Window services, including facilitated issuance of import permits and export authorizations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Pakistan was downgraded from the "Watch List" to the "Priority Watch List" after the 2008 Special 301 process because of concerns about weak protection and enforcement of intellectual property rights.

IPR Protection

The government of Pakistan has identified intellectual property protection as a key area for its second generation economic reforms. Since 2000, Pakistan has enacted five major new laws relating to patents, copyrights, trademarks, industrial designs, and layout designs for integrated circuits, but their impact has been limited by weaknesses in the legislation and/or enforcement.

However, there are concerns that Pakistani authorities still have not implemented adequate protection against unfair commercial use of pharmaceutical test data submitted in conjunction with applications for regulatory approval in Pakistan. In addition, Pakistan has not yet formalized its process of delaying the issuance of marketing approval of unauthorized copies of patent infringing pharmaceutical products. Further, a draft plant breeder's rights law has not yet been approved by Parliament. Draft legislation on this issue has been awaiting approval from the National Assembly for over a year and was returned to the Provincial Assemblies for their concurrence. In addition, a patent ordinance that removed an 18-month processing requirement appears to have slowed the processing of pending patent applications. Pakistan's inaction in these areas is a major impediment to international investment in pharmaceutical and other innovative industries.

IPR Enforcement

The government of Pakistan took steps in 2006 and 2007 to improve copyright enforcement, especially with respect to optical disc piracy. Nevertheless, there was little progress in 2008, and weak IPR enforcement in Pakistan remains a serious barrier to trade and investment.

According to the International Federation of Phonographic Industry, after a crackdown by the government of Pakistan in 2005, there has been a significant decline in the quantity of infringing products being manufactured and smuggled out of Pakistan. Of the seven known optical disc manufacturers, five remain shut. The remaining two produce fully licensed products for the local and international market. However, Pakistan is now reportedly being used as a conduit for infringing products coming from Russia, Malaysia, Singapore, China, Bangladesh, and Sri Lanka for onward distribution.

Pakistan's Intellectual Property Rights Organization (IPO), an autonomous body under Pakistan's Cabinet Division, has consolidated authority over trademarks, patents, and copyrights – areas that were previously handled by three separate ministries. The IPO is beginning to monitor the enforcement and protection of intellectual property rights through cooperation with law enforcement agencies, in addition to dealing with other IPR related issues. The Federal Investigation Agency (FIA) has the primary responsibility for IPR enforcement and conducts anti-piracy raids. Between January 2007 and August 2008, the FIA reportedly conducted 14 raids, seizing infringing goods and materials, resulting in the filing of 25 cases involving optical disc piracy, book piracy, and counterfeit products. The raids were carried out in a number of Pakistan's cities, including Rawalpindi, Lahore, Karachi, Multan, and Faisalabad. Book piracy also continues to present barriers to trade and investment.

SERVICES BARRIERS

Pakistan generally permits foreign investment in services, subject to certain provisions, including a minimum initial capital investment of $150,000 for most sectors, except banking for which there are special rules described below. Foreign investors may hold up to a 100 percent equity stake and are allowed 100 percent repatriation of profits in most sectors. The requirement that foreign investors accumulate 40 percent local equity within 5 years of an initial investment has been eliminated and the cap on repatriation of profits at a maximum of 60 percent of total equity or profits has been abolished. Foreign investors in services and other non-manufacturing sectors (including international food franchises) are allowed to remit royalties and technical fees, subject to certain conditions. Though there are no restrictions on payment of royalties and technical fees for the manufacturing sector, there are some limitations on the non-manufacturing sector, including limiting initial royalty payments to $100,000 and capping subsequent royalty payments at 5 percent of net sales for five years. In information technology services, including software development, foreign investors are not subject to requirements for minimum initial investment.

Telecommunications

In 2003, the Pakistani government deregulated the telecommunications sector in an effort to comply with its WTO commitments and encourage growth in the sector. Pakistan Telecommunication Company Limited (PTCL) lost its monopoly on basic telephone services, and the government issued 14 licenses to long distance telephone companies (13 are in use), 72 licenses to local loop regional telephone companies (10 are in operation) and 92 licenses to wireless local loop companies (4 are in operation). The ability of telecommunications companies to operate in Pakistan will continue to depend on access to PTCL infrastructure, however. In 2005-2006, the government combined 15 value added services including Internet service provision, vehicle tracking system, and data network operations into one license, the Class Value Added (CVA) license. The government gave those who applied prior to announcement of this policy the option either to continue their old licenses or convert to CVA licenses. To date the government has issued 124 new CVA licenses and converted 93 old licenses to CVAs. At present, the government does not issue licenses specifically for Voice-over-Internet Protocol (VoIP), but long distance telephone license holders may also provide VoIP services.

Banking and Insurance

Under its WTO GATS commitments, Pakistan grants foreign firms the right to establish new banks as well as grandfathering acquired rights of established foreign banks and foreign securities firms. Foreign banks are permitted to open banking companies via the establishment of branches as well as wholly owned, locally incorporated subsidiaries subject to the condition that they have a global tier-1 (*e.g.,* equity and retained earnings) paid up capital of $5 billion or more or they belong to countries which are part of regional groups and associations of which Pakistan is a member, *e.g.*, the Economic Cooperation Organization (ECO) or the South Asian Association for Regional Cooperation (SAARC). Foreign banks not meeting these conditions are capped at a 49 percent equity stake.

The State Bank of Pakistan (SBP), Pakistan's central bank, has changed its branch licensing policy and has eliminated restrictions on the number of branches foreign banks may have. Currently, all banks have to submit an annual branch expansion plan to the SBP for approval. The SBP approves new branch openings based on the bank's net worth, adequacy of its capital structure, future earning prospects, credit disciplines, and the needs of the local population. However, all banks (including foreign banks) are now required to open 20 percent of their new branches in small cities, towns and villages. The SBP has raised the minimum paid up capital (usually shareholder equity) requirements for all locally incorporated banks to $292 million (net of losses). Currently banks are required to have $63 million as paid up capital; this will increase to $76 million in FY 2009 as part of the transition process. Branches of foreign banks operating in Pakistan (FBs) are also required to increase their assigned capital to $292 million (net of losses). However, with prior approval of the State Bank, foreign banks, whose headquarters hold paid up capital (free of losses) of at least to $300 million and have a capital adequacy ratio of at least 8 percent will be allowed to maintain the following minimum capital requirements: Foreign banks operating up to 5 branches are required to raise their assigned capital to $38 million by December 31, 2010 and foreign banks operating 6 to 20 branches will be required to raise their assigned capital to $76 million by December 31, 2010. All new banks, including branches of foreign banks, are required to meet the paid up/assigned capital requirement of $292 million before commencement of operations. The SBP has also raised the required minimum capital adequacy ratio for banks and development finance institutions to 10 percent.

The government permits only the parastatal National Insurance Company to underwrite and insure public sector firms. Private sector firms must meet their reinsurance needs within the country. Firms may seek foreign reinsurance facilities only if domestic insurance companies cannot meet these needs. Market domination in the life insurance sector may pose a significant barrier to entry, as the state-owned State Life Insurance Company holds over 76 percent of this market, although that number has been declining over the past several years. Five domestically-owned companies account for 78 percent of the general insurance (property, casualty, and health) market.

INVESTMENT BARRIERS

Foreign investors are generally free to establish and own business enterprises in Pakistan, with the exception of five restricted areas: arms and munitions, high explosives, currency/mint operations, radioactive substances, and new non-industrial alcohol plants. There are no ownership limits in other sectors of the economy, except for Pakistan's foreign equity limits in banking (described above). There is no minimum investment requirement for manufacturing. There is a $150,000 minimum foreign investment requirement in non-financial services (except information technology services), and a minimum investment requirement of $300,000 in agriculture, infrastructure projects, and social services (such as education and health).

The government's investment policy allows for full repatriation of capital, capital gains, dividends, and profits with the approval of the SBP. No requirements exist for technology transfer. The law provides for expropriation only upon adequate compensation and it prohibits changes in benefits and incentives. Incentives, including tax breaks and first year depreciation allowance, will not be changed in a way to disadvantage foreign investors versus domestic investors.

Pakistan has eliminated all local content requirements including those in the automobile sector. Until 2006, the automobile sector was subject to the so-called deletion program mandating the use of domestic inputs. The deletion program for the automotive sector was replaced with the "Tariff-Based System" (TBS) in 2006. The TBS provides for the imposition of higher tariffs on imported automotive parts that are also manufactured domestically; likewise, it provides for lower tariffs on imported automotive parts that are not also manufactured in Pakistan.

In late 2004, the United States and Pakistan launched negotiations on a Bilateral Investment Treaty (BIT). Talks stalled in 2006 but in 2008 both sides agreed to resume negotiations.

ANTICOMPETITIVE PRACTICES

The government of Pakistan launched a program to develop a new competition policy as a key "second generation reform" initiative. Towards this end, the Ministry of Finance and the Monopoly Control Authority worked with the World Bank and the UK Department for International Development, and, as a result, the 2007 Competition Ordinance replaced the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance (MRTPO) and established the Competition Commission. The newly formed Competition Commission is in the process of building its institutional capacity. The new competition law applies to all commercial activity in Pakistan, including for the first time all public sector organizations.

The sale of major state assets during the last few years has reduced the government's role in the power and telecommunications sectors. The state, however, continues to hold important equity stakes in the oil and gas, civil aviation, electric power, and steel sectors. The business community has expressed interest in the government of Pakistan's expanding competition in international trucking services.

The government of Pakistan has licensed two private airlines to compete with state owned Pakistan International Airlines. In retail food sales, the government has used below market prices in its chain of several hundred Utility Stores to create price competition in essential foodstuffs such as flour, rice, and lentils.

OTHER BARRIERS

The government's privatization program stalled following a series of Supreme Court decisions against the privatization of Pakistan Steel Mill. The amount earned through privatizations in FY 2008 was only $284 million, compared to $1.71 billion, in the previous year. From July to December 2007, 3.26 percent of United Bank Limited's shares have been sold through Global Depository Receipts for $65 million, and 7.5 percent shares of Habib Bank Limited have been sold through an Initial Public Offering for $154 million. The lack of a sound privatization plan and investor interest (attributable to investment climate and security concerns) has led to a halt in privatizations of state-owned enterprises.

Businesses operating in Pakistan have repeatedly called for strengthening national security against extremists. Corruption and a weak judicial system remain recurrent and substantial disincentives to investment. Pakistani laws targeting corruption include the 1947 Prevention of Corruption Act, the 1973 Efficiency and Discipline Rules, and most recently the 1999 National Accountability Bureau (NAB)

Ordinance. Previously, the NAB, the Federal Investigation Agency (FIA), and provincial anticorruption departments shared official responsibility for combating corruption. In October 2002, Pakistan's cabinet approved a National Anti-Corruption Strategy (NACS) that identified areas of pervasive corruption and recommended time-bound measures and reforms to combat corruption. The NACS also named the NAB as the sole anticorruption agency at the federal level. The present government has formed a committee to review the NAB ordinance; however, the review process is still incomplete. The government has changed the reporting authority of NAB from the Cabinet Division to the Ministry of Law and Justice.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. For example, a long standing investment dispute between a major U.S. multinational company and a local partner has raised concerns about the enforceability of international arbitration awards regarding contracts between private parties. In June 2005, the Lahore Civil Court ruled in favor of the U.S. multinational company, upholding the original arbitration settlement. However, the local partner has exercised its right to file an appeal in the Lahore High Court and the case is still pending.

In 2004, Pakistan's Cabinet approved the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Pakistan's Cabinet ratified the New York Convention on July 14, 2005, and conveyed the instrument of ratification to the United Nations Secretary General, who is the depository of such instruments. The New York Convention was implemented through an Ordinance which was renewed during the emergency imposed in November 2007. All ordinances enacted during emergency have become permanent laws under Pakistani law, including New York Convention.